IN THE SUPREME COURT OF THE UNITED STATES

.....TERM.....

No. 77-1211

Supreme Court, U. S.
FILED
MAR 29 1978
MICHAEL RODAK, JR., CLERK

LINDA FAY REGENOLD,

Appellant,

vs.

THE BABY FOLD, INC., A CORPORATION, and RICHARD RILEY and PRISCILLA RILEY,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

MOTION TO DISMISS

OR IN THE ALTERNATIVE TO AFFIRM

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TABLE OF CASES

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68 Ill.2d 419, 369 N.E.2d 858

Wilson v. Cook
327 U.S. 474, 66 S.Ct. 663

Herndon v. Georgia
295 U.S. 441, 55 S.Ct. 794

Stanley v. Illinois
405 U.S. 645, 92 S.Ct. 1208 (1972)

STATUTES CITED

Ill. Rev. Stat., ch. 4, §9.1-1 C (1975)

Ill. Rev. Stat., ch. 4, §9.1-8 (c) (1975)

Ill. Rev. Stat., ch. 4, §9.1-11 (1975)

STATEMENT OF FACTS

Petitioner instituted this action in the Circuit Court of McLean County, Illinois seeking the return of her son, Jason. On October 22, 1975 she had surrendered the child to the Baby Fold, a child care agency licensed by the Department of Children and Family Services of the State of Illinois.

On the day she surrendered the child to the Baby Fold she signed a document entitled "Final and Irrevocable Surrender for purpose of Adoption". It is not disputed that Linda Fay Regenold signed the document and that it was read to her prior to her signing it. Under Illinois law, the natural mother's rights are terminated by the execution of such document, and the agency to whom the child is surrendered is empowered to consent to any adoption thereafter institutioned. See Ill.Rev.Stat. Ch.4 §§9.1-1 C., 9.1-8 (c).

Since shortly after the signing of the surrender, Jason has resided with Richard and Priscilla Riley, who intervened in these proceedings in the trial court. The natural father of the child also signed a surrender document, and has not participated in these proceedings.

There is no question that on October 20, 1975 when Appellant contacted Appellee concerning the placing of her child for adoption, she was suffering stress from various sources. It is the magnitude and the effect of this stress that form the issues of this case.

By statute, the surrender signed by Linda Regenold is irrevocable unless "it is obtained by fraud or duress". Ill.Rev. Stat. Ch. 4 §9.1-11. By a recent amendment to this statute the fraud or duress must have been by the person obtaining the surrender. The major dispute then has become whether the conduct of others than the social workers at the Baby Fold taking the surrender may be considered.

Thomas A. Eckols was appointed Guardian Ad Litem for the minor child, Jason Regenold, and joins with the Appellees in this Motion.

OUESTION PRESENTED

Did the Supreme Court of Illinois correctly determine that the surrender signed by Appellant was not the product of fraud or duress from any source.

ARGUMENT

I. THE APPELLANT'S JURISDICTIONAL STATEMENT SHOULD BE DISMISSED FOR NONCONFORMANCE WITH THE RULES OF THIS COURT

Before turning to the merits of the appeal, consideration will be given as to whether the Appellant has properly presented her case before this Court.

Rule 15 of the Rules of this Court provides that a jurisdictional statement must present a concise statement as to the grounds for invoking the jurisdiction of this Court. On page 3 of the Appellant's jurisdictional statement, she purports to bring this case within the jurisdiction of 28 U.S.C. §1257(2). That is, that there is involved the question of the validity of a statute of any State on the grounds that it is repugnant to the Constitution of the United States.

There is no concise statement by the Appellant as to what ruling by any Court in the State of Illinois reached the question of the constitutionality of the statute involved.

In her first purported question presented to this Court, the Appellant claims that the Supreme Court of Illinois ignored the voluntariness of the consent. In these questions that she seeks to present to this Court, the Appellant has unwittingly revealed that the real question that she attempts to

present is the factual dispute as to whether the surrender (not the consent as it is referred to by Appellant) was a product of fraud or duress. That is, before any constitutional question can be reached, we must first answer the question whether there was fraud or duress because absent such conduct, the validity of the statute need not be discussed.

Clearly, both the Appellate Court of Illinois for the Fourth District (Regenold v. The Baby Fold, 42 Ill.App.3d 39, 355 N.E.2d 361) and the Supreme Court of Illinois (68 Ill.2d 419, 369 N.E.2d 858) found <u>as a matter of fact</u> that no one, whether a member of the Baby Fold staff or anyone else, dominated the will of Appellant nor deceived her into surrendering her child. Had any Court of Illinois ruled that the free will of Appellant was dominated, or that she was deceived, but that such fact would not be considered in light of the statutory limitations of the Illinois Adoption Act, Appellant may have an argument concerning the validity of the Act. However, the Courts of Illinois did not limit their consideration to whether the surrender was obtained by fraud or duress by the person obtaining the surrender. The Appellate Court stated:

> "Although we entertain serious doubts as to the constitutional validity of the statute, we need not resolve that issue. We conclude that the stress petitioner has established, regardless of its source, as a matter of

> law does not amount to the duress which is necessary to vitiate her consent." 355 N.E.2d at 364.

Similarly, the Supreme Court of Illinois considered the totality of circumstances, and almost by dicta, upheld the statute. The Court stated:

> "We, as well as the Appellate Court, have applied the totality of circumstances test to this case . . . This is the procedure urged by Linda and is in keeping with the practice followed in applying the Act prior to the 1973 Amendment." 369 N.E.2d at 866.

In view of the foregoing opinions, it is clear that the tests of the validity of surrenders for the purposes of adoption, which are proposed by Appellant, were applied by the Courts of Illinois. Concisely what is the question presented? It is that the Courts erred in finding as a matter fact that the surrender was not freely given.

Rule 15 further provides in Subsection (d) that the Appellant is to provide a concise statement of the case containing the facts material to its consideration and the method of raising the questions sought to be presented to this Court. The purported statement of facts contained in the Appellant's jurisdictional statement can more accurately be described as a synopsis of Appellant's closing argument, rather than a concise statement of facts in the case. A review of the findings

of the trial court in her appendex will reveal that there is no reference to any constitutional issues being raised in the trial court. There is no contention that any issue concerning the validity of the statute was decided and, in fact, it will be seen that the trial court agreed with the Appellant that the totality of the circumstances rather than simply the acts of the person obtaining the surrender should be considered. The Appellant, therefore, has not complied with the rule and revealed that no federal constitutional question was raised until the filing of her responsive brief in the Appellate Court of Illinois, Fourth District. Nor is there a statement as to what issue in this case is a substantial federal question. True, substantial rights may be involved, but the Courts of Illinois have stated, in effect, that if Appellant's point of view is adopted, there, as a matter of fact, has been no domination of her will.

She does not properly set forth these matters because she seeks a review of the facts. Her appeal should be dismissed.

II. NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED NOR WAS SUCH QUESTION PASSED ON

As an alternative, the Appellees contend that this appeal should be dismissed without further consideration by this Court because no substantial federal question is presented, nor was any such question passed upon by the Courts of Illinois. A reading of the decision of the Supreme Court of Illinois

will reveal that its comments concerning the validity of the statute were in essence dicta. This is because a full consideration of all the circumstances involved in the case was undertaken. While the Court certainly does comment that the legislative restriction on the revokability of the surrender was reasonable, this comment was only made after an extensive review of the facts presented to the Court and which, in essence, adopted the Appellant's point of view. Consequently, this is not a case where evidence was suppressed, or not considered, or where factors sought to be presented were not considered.

Each and every item presented by the Appellant at trial was considered both by the Appellate Court of Illinois for the Fourth District and the Supreme Court of Illinois. Both Courts stated in strong language that there was absolutely no threat, inducement, or wrongdoing by any party. Common sense and every day experience dictate that happy mothers from happy homes do not ordinarily even consider adoption. Consequently, the typical mother in the adoption setting is suffering from financial problems, from family problems, and from other personal difficulties. It is difficult to conceive of a mother considering adoption who is without these stresses and it is even more difficult to conceive of a mother who, after surrendering her child for adoption, does not at some point in time have second thoughts about what she has done.

If this Court were to accept this case for full consideration, it would first have to review all of the evidence in the case to determine what, if any, effect the circumstances surrounding the giving of the surrender had upon the Appellant. This question must be answered because whatever standards are applied to determine the validity of the surrender, it is obvious that there must first be a factual determination that the giving of the surrender was effected by some person or circumstance. The Supreme Court of Illinois has found as a matter of fact that although the Appellant was suffering various stresses, the surrender was given as a free and voluntary act.

The decision of the trial court set out in the appendex of the Appellant's jurisdictional statement will reveal that the issues framed in this case involved, in accordance with the Illinois statute, the question of whether the surrender was the product of fraud or duress. There was no attempt in the trial court to set new constitutional standards for the giving of a surrender nor was there any contention that there should be a constitutionally mandated procedure to govern the validity of such procedures. To be sure, the Appellees have contended from the outset that conduct of others not agents of the Baby Fold cannot and should not be considered in determining whether fraud or duress was present. In this context we have been particularly

unsuccessful. The opinions of all of the Illinois Courts will show that our point of view was rejected and that the totality of circumstances was considered. What new concepts the Appellant wishes to present to this Court are unknown at this time. Suffice it to say that on the issues presented to the Courts of Illinois, the Appellant has been unsuccessful. She has voluntarily signed a surrender for adoption which has been upheld upon a finding that it was knowingly and voluntarily given without fraud or duress by any party.

Had the Supreme Court of Illinois determined that fraud or duress existed but that such could not be considered in light of the statute, Appellant would have sound standing to invoke the jurisdiction of this Court. It might be said in this case that the statute was upheld only prospectively and since the totality of circumstances was considered, Appellant is not aggrieved. So far as Linda Regenold is concerned, the statute did not govern and therefore is not drawn in question; this Court should in such a case not entertain this appeal. Wilson v. Cook, 327 U.S. 474, 66 S.Ct. 663.

Surely the Appellant does not contend that in viewing all of the circumstances surrounding the giving of the surrender that she may now raise new grounds for measuring the validity of the document; such contentions must first be presented and passed upon by

state Courts. Herndon v. Georgia, 295 U.S. 441, 55 S.Ct. 794.

A review of the facts in this case will reveal that Appellant chose to attack the surrender within the statutory framework of the Illinois Adoption Act. She pleaded and attempted to prove that the surrender was the product of fraud and duress. She sought to do this by showing all of the facts surrounding the giving of the surrender. She was permitted to do this, over objection of the Appellees, and all of her evidence so presented was considered by the Appellate and Supreme Courts of Illinois. She has received far more than the minimum due process requirements to challenge the surrender, Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, and has had the opportunity to present her theories to the Courts of Illinois as to why the surrender should be set aside. The factual conclusions of these Courts are not subject to review by this Court nor should Appellant be permitted to assert additional theories. Appellees respectfully request that this case be dismissed or affirmed.

Respectfully submitted,

George L. Chesley, Attorney
for Appellees

APPENDIX

STATUTORY AUTHORITY

Chapter 4, Illinois Revised Statutes, Section 9.1-1 C (1975)

"Agency" for the purpose of this Act means a public child welfare agency or a licensed child welfare agency.

Chapter 4, Illinois Revised Statutes, Section 9.1-8 (c) (1975)

Except as hereinafter provided in this Section, consents shall be required in all cases, unless the person whose consent would otherwise be required shall be found by the court to be an unfit person as defined in Section 1 of this Act, or the parent of an adult sought to be adopted. Where consents are required in the case of an adoption of a child, the consents of the following persons shall be sufficient:

...(c) An agency, if the child has been surrendered for adoption to such agency ...

Chapter 4, Illinois Revised Statutes, Section 9.1-11 (1975)

A consent to adoption by a parent, including a minor, executed and acknowledged in accordance with the provisions of Section 8 of this Act, or a surrender of a child by

a parent, including a minor, to an agency for the purpose of adoption shall be irrevocable unless it shall have been obtained by fraud or duress on the part of the person before whom such consent, surrender, or other document equivalent to a surrender is acknowledged pursuant to the provisions of Section 10 of this Act or on the part of the adopting parents or their agents and a court of competent jurisdiction shall so find. The consent or surrender of a parent who is a minor shall not be voidable because of such minority.